

Appl. No. : 09/852,155
Filed : May 9, 2001

REMARKS

In response to the Office Action mailed May 19, 2003, Applicant respectfully requests the Examiner to reconsider the above-captioned patent application in view of the foregoing amendments and the following comments. As a result of the amendments listed above, Claims 73-242 remain pending, of which Claims 104-106, 111, 157-160, 163, 165-170 and 176-179 have been withdrawn from further consideration. Claims 73, 112-113, 145-148, 209, 220 and 241-242 have been amended. No claims have been cancelled or added.

In the Office Action mailed May 19, 2003, the Examiner rejected independent Claim 73 as being anticipated by Viale '728 and GB '765, and rejected a number of claims dependent from Claim 73 as being anticipated by Viale '728 and/or GB '765. Independent Claim 209 and a number of claims dependent therefrom, as well as a number of claims dependent from Claim 73, were rejected as obvious over Viale '728 in view of Takizawa. Independent Claim 209 and a number of claims dependent therefrom, as well as a number of claims dependent from Claim 73, were rejected as obvious over GB '765 in view of Takizawa. Claims 220 and 241-242 were objected to, but the Examiner indicated that these claims would be allowable if rewritten in independent form. Claims 181-208 were allowed. Claim 149 was rejected as indefinite due to a lack of antecedent basis for one recited claim element.

Rejections Over Prior Art

Independent Claims 73 and 209 have been amended in a manner which is believed to obviate the Examiner's rejections. For example, neither Viale '728 nor GB '765 discloses or suggests the limitation "providing said active portion with sufficient transverse flexibility to bow ... reciprocating kick stroke cycle" in combination with the remaining claim elements recited in amended Claim 73. The Examiner's combinations of Viale or GB '765 with Takizawa, even if proper (a point not presently conceded by Applicant), would still lack any teaching of "said active portion having sufficient longitudinal flexibility along said predetermined length to permit said active portion to form a substantially S-shaped wave along said predetermined length during an inversion phase of a reciprocating kick stroke cycle" in combination with the remaining claim elements recited in amended Claim 209.

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Accordingly, amended independent Claims 73 and 209 are believed to be allowable over the prior art of record. Their dependent claims are also believed to be allowable, by virtue of their dependence from allowable base claims as well as their recitation of further novel and nonobvious combinations of method acts.

Rejections for Indefiniteness

The amendments to Claim 73 presented herein are believed to provide antecedent basis for "said S-shaped wave" recited in Claim 149. Accordingly, Claim 149 is believed to comply with section 112, paragraph 2.

Conclusion

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, issuance of a Notice of Allowance is most earnestly solicited.

Applicant respectfully traverses each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Any arguments in support of patentability and based on a portion of a claim should not be taken as founding patentability solely on the portion in question; rather, it is the combination of features or acts recited in a claim which distinguishes it over the prior art.

The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney, Mark J. Kertz at (949) 721-6318 to resolve such issue(s) promptly.

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Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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